United States Court of Appeals

for the Second Circuit

APPENDIX

75-4203

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JULIA D. VICTORINO

Petitioner,

Docket No. 75-4203

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

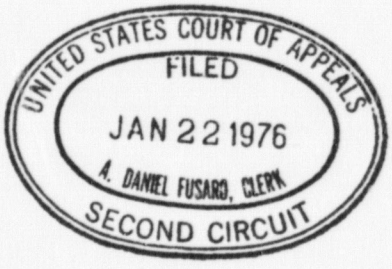
Respondent.

B
P/S

PETITION TO REVIEW
A FINAL ORDER OF
THE BOARD OF IMMIGRATION APPEALS

PETITIONER'S APPENDIX

STEVEN S. MUKAMAL, Esq.
Counsel for Petitioners
BARST & MUKAMAL
New York, New York 10038
212 952-0700



3

PAGINATION AS IN ORIGINAL COPY

CONTENTS OF APPENDIX

United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A20 590 516 - New York JUL 17 1975

In re: JULIA DOROTEO VICTORINO

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Stephen Singer, Esquire
Barst & Mukamal, Esquires
127 John Street
New York, New York 10038

ON BEHALF OF I&N SERVICE: Paul C. Vincent, Esquire
Appellate Trial Attorney

ORAL ARGUMENT: July 8, 1975

CHARGES:

Order: Section 241(a)(2), I&N Act [8 U.S.C. 1251(a)(2)] - Nonimmigrant - remained longer than permitted

APPLICATION: Withholding of deportation under section 243(h) of the Immigration and Nationality Act

This case presents an appeal from an order of an immigration judge, dated February 25, 1975, in which the immigration judge found the respondent deportable and ordered her deportation. She was, however, granted the privilege of departing voluntarily in lieu of deportation. Deportability is not in issue. The respondent appeals only from the immigration judge's denial of her application for withholding of deportation under section 243(h) of the Immigration and Nationality Act. The appeal will be dismissed.

We have reviewed the record as well as contentions advanced on appeal and conclude that the decision of the immigration judge was correct. The respondent has failed to establish that she has a well-founded fear that her life or freedom will be threatened in the Philippines on account of her race, religion, nationality, membership in a particular social group, or political opinion. Accordingly, we agree with the immigration judge that she will not suffer persecution if deported there. See Matter of Dunar, Interim Decision 2192 (BIA 1973).

On appeal counsel contends that the immigration judge is often prejudiced by the State Department's determination in response to the respondent's request for asylum. In this case the Director of Refugee and Migration Affairs advised in a letter dated March 29, 1974 as follows:

> "Miss Victorino says she fears to return to the Philippines because of the existence of martial law. There is no reason to believe that this fear is well-founded in the meaning of the Convention Relating to the Status of Refugee."

While the communication from the State Department is not controlling, the immigration judge may properly consider it in deciding whether or not the respondent merits favorable exercise of discretion here. The source is reliable, knowledgeable and competent, Hosseinmardi v. INS, 405 F.2d 25 (9 Cir. 1969); Khalil v. INS, 457 F.2d 1276 (9 Cir. 1972). We agree with the immigration judge's observation that the respondent's fear of returning to the Philippines is principally an economic one and one which is of general applicability to all citizens of the Philippines and not a difficulty which occurs by reason of her race, religion, nationality, policial opinion or membership in a particular group. Accordingly, we shall uphold the immigration judge's decision and dismiss the appeal.

A20 590 516

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent will be permitted to depart from the United States voluntarily within 60 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Acting Chairman

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

FEB 25 1975

File: A20 590 516 - New York, N.Y.

In the Matter of:)

JULIA DOROTEO VICTORINO) IN DEPORTATION PROCEEDINGS

- Respondent -)

CHARGE: Section 241(a)(2) I & N Act - nonimmigrant remained longer than permitted.

APPLICATION: Voluntary departure; temporary withholding of deportation Section 243(h) of I & N Act.

In Behalf of Respondent:

Barst & Mukamal, Esqs.
127 John Street
New York, N.Y. 10038
Philip J. Kleiner, Esq.
of counsel

In Behalf of Service:

William Dunlop, Esq.
Trial Attorney
New York, N.Y. 10007

DECISION OF THE IMMIGRATION JUDGE

DISCUSSION: The respondent is a 30 year old single female alien, a native and citizen of the Philippines who last entered the United States at Seattle, Washington on May 1st, 1970 at which time she was admitted as a nonimmigrant visitor for pleasure. She was authorized to remain until December 15, 1970 and remained beyond that date without authority thereby becoming subject to deportation on the charge contained in the Order to Show Cause.

The respondent has applied for voluntary departure in lieu of deportation. She has testified that she has never been arrested or been in difficulty with the police and there is no evidence of record indicating that she has

been other than a person of good moral character. She has sufficient funds with which to leave the United States and although she appears to be most reluctant to do so, I am convinced that she will leave at her own expense if faced with the alternative of deportation. Accordingly she will be granted the privilege of voluntary departure.

The respondent declined to indicate any country to which she would prefer to be sent in the event that the alternate order of deportation becomes effective. She was advised therefore that if deportation became necessary such deportation would be directed to the country of her citizenship namely the Philippines.

The respondent thereupon submitted a request for a temporarily withholding of deportation to the Philippines on the grounds that she would be subject to persecution if deported to that country.

The respondent was previously interviewed by an officer of the Immigration and Naturalization Service and as a result of such interview a letter was sent to the Director of the Office of Refugee and Migration Affairs of the Department of State in Washington D.C. That office replied to the Immigration Service under date of March 29, 1974 and the Director of the Office of Refugee and Migration Affairs stated that her claim that she feared to return to the Philippines because of the existence of martial law did not appear to have any foundation in fact nor did it appear to fall within the Convention Relating to the Status of Refugees.

In connection with the hearing before me the respondent continued to

reiterate her fear that because of the existence of martial law in the Philippines she feared to return. She stated that her friends and parents had written to her telling her not to return to the Philippines because many businesses have closed down, there is no work and no job available for her if she did return to the Philippines. It was admitted in the course of the hearing before me that she had been employed in the Philippines but had lost her job about a year and a half before coming to the United States. She had worked as a baker in the Philippines and admitted that the difficulties which she had heard about as existing in the Philippines relating to the difficulties experienced by students and not the difficulties experienced by people working as bakers.

The respondent had three brothers, two sisters and her mother and father in the Philippines. There is no evidence that any of her family have suffered any difficulties by reason of the existence of martial law.

The respondent was questioned closely as to what was the nature of a government under martial law and its relationship to the citizenry and she was unable to give any details of what sort of conditions might exist.

It seems obvious from her testimony that her fear of returning to the Philippines is principly an economic one and one which is of general applicability to all citizens of the Philippines and not a difficulty which occurs by reason of her race, religion, nationality, political opinion or membership in a particular social group.

The respondent and her attorney were granted an opportunity to submit any

additional evidence from public sources relating either to the general situation in the Philippines or to the impact of that general situation on this particular alien. Such information has been submitted and made part of this record but it does not shed any real additional light. As the memorandum points out since the advent of martial law on January 18, 1973 numerous terrorist groups supported by large segments of the population have sprung up in an effort to overthrow or harass the present martial rule status of the nation. I fail to understand the submitted memorandum insofar as it attempts to discredit the martial law existing in the Philippines by stating that the Symbionese Liberation Army in California had announced its alliance with the Philippine rebels who are opposed to the state of martial law. It may well be that a certain degree of disorder exist in the Philippines at this time because of the competing factions, but it is well established that this form of general disorder, not directed at this particular alien by reason of race, religion, nationality, political opinion or membership in a particular social group is not the kind of persecution contemplated by Section 243(h) of the Immigration and Nationality Act. As the Board of Immigration Appeals pointed out in Matter of Surzycki, 13 I & N Dec. 261.

> "There is no indication that the Congress enacted Section 243(h) of the Act with a view of guaranteeing an alien freedom of speech in the country of his nativity, and if he is not afforded this by his government, then it could be considered that he is being persecuted.
>
> We do not interpret Section 243(h) as covering this situation. There are many totalitarian governments in the world today which do not brook dissent of any nature. We do not hold that an alien who feels compelled to espouse in his native country beliefs which are looked

> upon with disfavor by his government is thereby being persecuted if the government acts against him. The respondent has not met the burden of proving that he would be singled out as an individual and persecuted upon his return to his native country."

Similarly this respondent has failed to establish that she would be singled out for persecution as distinct from the general mass of other Philippine nationals and accordingly I find that she has failed to sustain her burden of establishing that she would be subject to persecution within the meaning of Section 243(h) of the Act.

In view of the fact that she has resided here for close to five years she will be given sixty days in which to leave the United States.

ORDER: IT IS ORDERED that in lieu of an order of deportation the respondent be granted voluntary departure without expense to the government on or before sixty days from the date this order become final, or any extension beyond such date as may be granted by the District Director and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if the respondent fails to depart when and as required the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: the respondent shall be deported from the United States to the Philippines on the charge contained in the Order to Show Cause.

IT IS FURTHER ORDERED that the application for a temporary withholding of deportation under Section 243(h) of the Immigration and Nationality Act be DENIED.

A-8

IRA FIELDSTEEL
Immigration Judge

DEPARTMENT OF STATE
Washington, D.C. 20520

A20 590 516

MAR 29 1974

Dear Mr. Marks:

Reference is made to your letter of December 27, 1973, concerning the request for asylum of Miss Julia Victorino, A20 590 516, a citizen of the Philippines.

Miss Victorino says she fears to return to the Philippines because of the existence of martial law. There is no reason to believe that this fear is well-founded in the meaning of the Convention Relating to the Status of Refugees.

On the basis of the information thus far submitted, we are unable to conclude that Miss Victorino should be exempted from regular immigration procedures on the grounds that she would suffer persecution on account of race, religion, nationality, political opinion, or membership in a particular social group should she return to the Philippines. Should Miss Victorino present additional information which to the Service seems to require further review, we will be glad to give further consideration to the case.

Sincerely,

Louis A. Wiesner

Louis A. Wiesner
Director
Office of Refugee and
Migration Affairs

Mr. Sol Marks,
District Director,
Immigration and Naturalization Service,
20 West Broadway,
New York, New York 10007.

(2)
1/23/75

A-9